

REMARKS

Prior to entry of the instant amendment, claims 1, 2, 4, 5, 7-12 and 19-22 are pending in the subject application. By the instant amendment, claims 1, 2, 5, 8, 19 and 20 are amended, and claim 4 is cancelled. Claim 1 is the sole independent claim.

Claims 1, 2, 5, 7-12 and 19-22 are presented to the Examiner for further prosecution on the merits.

A. Introduction

In the outstanding Office Action Made Final:

1. claim 5 was objected to;
2. claim 2 was rejected under 35 U.S.C. § 112, second paragraph;
3. claims 4 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,072,915 to Tanaka ("the Tanaka reference");
4. claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference and further in view of U.S. Patent No. 6,278,957 to Yasuda et al. ("the Yasuda et al. reference"); and
5. claims 1, 2, 5, 7-12, 21 and 22 were objected to as being dependent upon a rejected base claim, but indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if amended to overcome the claim objection in claim 5 and rejection in claim 2.

B. Objection to Claim 5

In the outstanding Office Action Made Final, claim 5 was objected to on the basis that the term "image data" in claim 5 is improperly used as a plural noun. Applicant respectfully submits that the term "data" may be properly used in plural form.¹ Nonetheless, in order to

¹ The Merriam-Webster dictionary states,

Data leads a life of its own quite independent of *datum*, of which it was originally the plural. It occurs in two constructions: as a plural noun (like *earnings*), taking a plural verb and plural modifiers (as *these*, *many*, *a few*) but not cardinal numbers, and serving as a referent for plural pronouns (as *they*, *them*); and as an abstract mass noun (like *information*), taking a singular verb and singular modifiers (as *this*, *much*, *little*), and being referred to by a singular pronoun (*it*). Both constructions are standard. The plural construction is more common in print, evidently because the house style of several publishers mandates it.

See <http://www.m-w.com/dictionary/data> (visited November 26, 2007).

advance prosecution of the instant application, by the instant amendment, claim 5 is amended to recite, *inter alia*, “the image data is captured by the measurement apparatus . . .” Claims 2 and 8 are similarly amended. Therefore, applicant respectfully requests that this objection be favorably reconsidered and withdrawn.

C. Asserted Rejection Under 35 U.S.C. § 112, Second Paragraph

In the outstanding Office Action Made Final, claim 2 was rejected under 35 U.S.C. § 112, second paragraph, on the basis that the use of the term “about” in claim 2 renders this claim indefinite. By the instant amendment, claim 2 is amended to delete the term “about.” Therefore, applicant respectfully request that this rejection be favorably reconsidered and withdrawn.

D. Asserted Anticipation Rejection

In the outstanding Office Action Made Final, independent claim 4 and dependent claim 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by the Tanaka reference. This rejection is respectfully traversed for at least the reasons set forth below.

The Office action indicates that dependent claim 1 recites allowable subject matter. By the instant amendment, the subject matter of independent claim 4 has been incorporated into dependent claim 1, such that claim 1 is rewritten in independent form. Additionally, claim 4 is cancelled, and claim 20 is amended to depend from allowable claim 1. Accordingly, applicant respectfully submits that the rejection of claims 4 and 20 has been overcome, and respectfully requests that this rejection be favorably reconsidered and withdrawn.

E. Asserted Obviousness Rejection

In the outstanding Office Action Made Final, claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference in view of the Yasuda et al. reference. This rejection is respectfully traversed for at least the reasons set forth below.

The Office action indicates that claim 1 recites allowable subject matter. By the instant amendment, claim 1 is rewritten in independent form, and claim 19 is amended to depend from allowable claim 1. Accordingly, applicant respectfully submits that the rejection of claim 19 has been overcome, and respectfully requests that this rejection be favorably reconsidered and withdrawn.

F. Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication of allowable subject matter in claims 1, 2, 5, 7-12, 21 and 22. Applicant also notes the Examiner's comments on the failure of applied prior art to teach each and every element of claim 1.² Applicant agrees that the applied prior art fails to teach the subject matter identified by the Examiner. However, applicant respectfully submits that each of the allowable claims is patentable by merit of all of the subject matter recited therein, not merely the particular claim terms identified by the Examiner.

As discussed above, claim 1 has been rewritten in independent form. Each of claims 2, 5, 7-12, 21 and 22 ultimately depends from claim 1. Accordingly, applicant respectfully submits that these claims, as well as claims 19 and 20 discussed above, are in condition for allowance, and a notice to that effect is respectfully requested.

G. Examiner-Initiated Interview Summary

On October 24, 2007, the Examiner and Applicant's representative briefly discussed the outstanding rejections, at which time the Examiner proposed amendments that the Examiner indicated would place the application in condition for allowance. No discussion of the cited prior art references occurred. Applicant appreciates the Examiner's assistance in

² Office Action Made Final mailed October 30, 2007, paragraph no. 15, page 5.

setting forth the proposed Examiner's amendment, and notes that the instant amendments to the claims generally correspond to the amendments proposed by the Examiner.

H. Conclusion

If the Examiner believes that additional discussions or information might advance the prosecution of the instant application, the Examiner is invited to contact the undersigned at the telephone number listed below to expedite resolution of any outstanding issues.

In view of the foregoing amendments and remarks, reconsideration of this application is earnestly solicited, and an early and favorable further action upon all the claims is hereby requested.

Respectfully submitted,

LEE & MORSE, P.C.

Date: December 18, 2007



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PETITION and
DEPOSIT ACCOUNT CHARGE AUTHORIZATION

This document and any concurrently filed papers are believed to be timely. Should any extension of the term be required, applicant hereby petitions the Director for such extension and requests that any applicable petition fee be charged to Deposit Account No. 50-1645.

If fee payment is enclosed, this amount is believed to be correct. However, the Director is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-1645.

Any additional fee(s) necessary to effect the proper and timely filing of the accompanying-papers may also be charged to Deposit Account No. 50-1645.